

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
NORM VEHR'S dba PACIFIC BEACH
WATER SYSTEM,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY, and
UNITED STATES DEPARTMENT OF
THE NAVY, WESTERN DIVISION,

Respondents.

PCHB No. 82-36

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal from an order granting a permit to appropriate ground water, came before the Pollution Control Hearings Board, David Akana (presiding) and Gayle Rothrock, at a formal hearing on May 27 and 28, 1982, in Lacey, Washington.

Appellant was represented by his attorney, Lawrence L. Tracy; respondent Department was represented by Robert E. Mack, Assistant Attorney General; respondent permittee was represented by its attorney, Norman J. Furuta. Court Reporters Betty Koharski and Lois

1 | Fairfield recorded the proceedings.

2 | Having heard the testimony, having examined the exhibits, and
3 | having considered the contentions of the parties, the Board makes these

4 | FINDINGS OF FACT

5 | I

6 | On July 13, 1981, the Department of the Navy (Western Division,
7 | Naval Facilities Engineering Command) applied for a permit to
8 | appropriate public ground water of the state of Washington in
9 | application No. G2-25958. The proposed appropriation was to withdraw
10 | up to 300 gallons per minute (GPM) continuously to a maximum of 22
11 | acre-feet (AF) per year from three wells for domestic water use at the
12 | Naval Facility in Pacific Beach, Washington. Water for fire
13 | protection was also requested, as needed.

14 | II

15 | Appellant Norm Vehrs dba Pacific Beach Water System holds two
16 | certificates of ground water rights, No. 304-D and G2-00988C. The
17 | location of diversion for both certificates is within Lot 6, Block 18
18 | of Highland Heights addition in Pacific Beach.

19 | Certificate No. 304-D, with a priority date of July 1, 1923,
20 | entitles appellant to withdraw up to 300 GPM and 42 AF per year for a
21 | commercial water system serving Pacific Beach in Grays Harbor County.

22 | Certificate No. G2-00988C, with a priority date of November 5,
23 | 1971, certifies the right to withdraw from a well up to 300 GPM and
24 | 252 AF per year for municipal supply for use in the area served by
25 | Pacific Water Company within Township 20 North, Range 12 W.W.M. in

26 |
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1 Grays Harbor County.

2 Appellant contends that the Department of the Navy's (hereinafter
3 "Navy") proposed appropriation will impair his prior existing rights.
4 Appellant has two other wells known as the Evergreen System, for which
5 there is no issue in dispute.

6 III

7 The Navy facilities are located within the area presently served
8 by appellant and are being provided with water from appellant's
9 system. The Navy's dissatisfaction with the quality and service of
10 appellant's product prompted the move to secure a separate water
11 system and ultimately, this appeal. This dissatisfaction occurred
12 during the period at appellant's ownership of the water system and
13 prior thereto.

14 IV

15 There are three drilled well holes in the Pacific Beach vicinity
16 under appellant's control. The first, Well No. 1 (Exhibit A-3),
17 serves the entire needs of appellant's service area, including
18 business, residential, and the Naval Facility. Presently, the well is
19 equipped with a 300 GPM pump but because of the treatment system, can
20 only provide up to 135 GPM of water. The well is believed to be
21 drilled 190 feet deep. It has an eight-inch casing. The static water
22 level (SWL) is at about 89 feet; well drawdown at 300 GPM was recorded
23 at 21 feet. The well is located about 700 feet from the ocean and at
24 an elevation of 105 feet. Sometime before, the water intake which is
25 not screened, was raised ten feet to a 164-foot depth to avoid sand.

1 The total system used in 1981 was about 7 million cubic feet (161
2 AF--126 AF in 1980) per year. The Navy accounts for about 15 percent
3 of that total. The system capacity is strained during periods of high
4 use.

5 The second well, Well No. 2, is located about 150 feet east of
6 Well No. 1. It was drilled in the 1950's and serves as an auxiliary
7 water source for Pacific Beach. It is drilled to a depth of 250 feet
8 and has a 10-inch casing. The exact SWL is presently unknown but has
9 been recorded at 100 feet. Because of the presence of sand in the
10 well, the water is not regularly used in the system. There was no
11 evidence of a water right for the well.

12 The third well is a capped and abandoned well located about 40
13 feet east of Well No. 1. The records show that the well was drilled
14 in 1923 to a depth of 132 feet and had a six-inch casing. Certificate
15 No. 304-D was issued for the well. In 1975, the volume of water to be
16 withdrawn was increased to 252 AF per year, supplementary to
17 certificate 304-D. This later change is evidenced in the records
18 associated with certificate No. G2-00988C. There is no persuasive
19 evidence that an application for a change in point of withdrawal was
20 made. The abandoned well is the only well for which a well driller's
21 log was prepared. The abandoned well and Well No. 1 are each located
22 within the same recorded platted property on both the certificates,
23 however.

24 V

25 The Navy property is located next to appellant's Well No. 1 and
26

1 abandoned well sites. It would be possible for the Navy to drill one
2 of its three wells about 100 feet from appellant's operating well.
3 Using the maximum withdrawal rate allowed at Well No. 1 and the
4 maximum proposed withdrawal rate (300 GPM) at 100 feet away, there
5 would be an increase of 12 feet in drawdown at Well No. 1. This
6 increase concerns appellant because the projected drawdown at 300 GPM
7 at Well No. 1 is presently estimated to be at or about mean sea
8 level. There is a moderate potential for salt water to enter the
9 fresh water aquifer under the foregoing situation. If this should
10 occur, it could be difficult to clear the aquifer, and a new supply of
11 water would be required.

12 VI

13 The Navy's proposed appropriation is less intensive than as
14 portrayed by appellant, however. First, the three wells will each be
15 equipped with a 100-GPM pump, rather than a 300-GPM pump as assumed.
16 Second, the Navy does not intend to locate a well any closer than 200
17 feet from Well No. 1. Other wells would be spaced apart 50 to 100
18 feet farther away. Third, the actual continuous domestic use at the
19 Navy, using a 150,000 gallon storage tank, would be only about 13
20 GPM. The remaining water flow rate would be available for fire
21 protection on an as-needed basis. Fourth, the water to be used by the
22 Navy for domestic purposes is limited to 22 AF per year. Pumping at
23 300 GPM continuously would result in exhausting the water right volume
24 limit in about 17 days. It is not realistic to assume that the known
25 domestic rate of use would be so expended. Fifth, the ground water

1 recharge in the area ranges between 320 and 1,280 AF per year, with an
2 average recharge of about 724 AF per year. Using appellant's
3 withdrawals in 1980 of 126 AF, or his estimated 1981 figures of 161
4 AF, and adding to it the proposed 22 AF withdrawal of the Navy results
5 in a figure well within the low recharge figure. Appellant's well and
6 the proposed Navy wells would be the only major permitted wells in the
7 immediate vicinity at this time. The total number of wells per acre
8 presently in the vicinity, including other domestic wells, do not
9 ordinarily result in interference between wells in the type of soil at
10 the site.

11 VII

12 There are other factors which indicate that the Navy's proposed
13 appropriation would not now interfere with appellant's well. First,
14 appellant has not used and is not presently capable of using more than
15 135 GPM and about 161 AF per year, fire flow excepted. Second, that
16 use would decline in the amount that the Navy's use would increase.

17 VIII

18 The actual potential for salt water intrusion is probably low
19 given the Navy's appropriation of between 13 and 100 GPM at one well,
20 rather than 300 GPM as assumed by appellant. Moreover, the Navy wells
21 would not be closer than 200 feet from Well No. 1.

22 IX

23 The provision for monitoring chloride concentration in the
24 proposed permit is prudent on any appropriation near the ocean. It
25 would also be prudent to space the Navy's three wells and devise a

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1 pumping scheme that would minimize any possibility of salt water
2 intrusion in the aquifer.

3 X

4 Appellant did not establish that the pumping water level would be
5 significantly affected by the proposed appropriation. The
6 preponderance of the evidence establishes the contrary.

7 XI

8 Any Conclusion of Law which should be deemed a Finding of Fact is
9 hereby adopted as such.

10 From these Findings the Board enters these

11 CONCLUSIONS OF LAW

12 I

13 RCW 90.44.060 makes certain provisions of ch. 90.03 RCW applicable
14 to ground water appropriations. RCW 90.03.290 requires the department
15 to make essentially four determinations prior to the issuance of a
16 surface water permit: (1) what water, if any, is available; (2) to
17 what beneficial uses the water is to be applied; (3) will the
18 appropriation impair existing rights; and (4) will the appropriation
19 detrimentally affect the public welfare. Stempel v. Department of
20 Water Resources, 82 Wn.2d 109 (1973). (Appellant does not challenge
21 the beneficial use aspects of the instant decision.)

22 Where the proposed appropriation relates to ground water, RCW
23 90.44.070 provides:

24 No permit shall be granted for the development or
25 withdrawal of public ground waters beyond the
26 capacity of the underground bed or formation in the

1 given basin, district, or locality to yield such
2 water within a reasonable or feasible pumping lift in
3 case of pumping developments, or within a reasonable
or feasible reduction of pressure in the case of
artesian developments.

4 II

5 There was ample evidence to affirmatively show that water was
6 available for the proposed withdrawal.

7 III

8 The relevant evidence shows that two certificates of water right
9 are extant. The total rights appear to be 300 GPM and 252 AF per year
10 of ground water. There is some confusion on the location of the well
11 identified in the certificates, but resolution of that factual matter
12 is not necessary. Even assuming the full exercise of the
13 certificates, the proposed appropriation of 100 GPM at the closest
14 well was not shown likely to impair either the quantity or quality of
15 water from Well No. 1. Because prudence should be exercised along
16 ocean shorelines, the Navy wells should be located not closer than 200
17 feet from Well No. 1.

18 Under the proposed appropriation as described in the hearing, the
19 likelihood of salt water intrusion into the fresh water source is not
20 probable. Prudent steps can also be taken to insure that this will
21 not occur, such as monitoring and well spacing.

22 Next, RCW 90.54.020(7) provides:

23 Development of water supply systems, whether publicly
24 or privately owned, which provide water to the public
25 generally in regional areas within the state shall be
encouraged. Development of water supply systems for
multiple domestic use which will not serve the public

1 generally shall be discouraged where water supplies
2 are available from water systems serving the public.

3 The Navy's proposed system would supply an area already served by
4 appellant's water system. The development of such multiple supply
5 systems is not to be encouraged generally. However, the granting of
6 the permit would allow the Navy to secure a source of potable water of
7 a quality it has long sought and not yet achieved. On balance, the
8 department's action is not inconsistent with the provisions of RCW
9 90.54.020 and subsection (7) thereof.

10 IV

11 Insofar as the provisions of RCW 70.44.070 and 90.44.130 are
12 incorporated by the issues in this matter, the evidence shows that the
13 aquifer in question is generously recharged. There was no evidence
14 that any pumping lift would be unreasonably increased because of the
15 proposed 22 AF per year withdrawal. Nor was there persuasive evidence
16 that appellant would not be able to maintain a safe sustaining yield
17 in the amount of his actual or potential appropriation.

18 V

19 The creation of the likelihood of a threat to the quality of an
20 aquifer, such as from salt water intrusion into potable water sources,
21 would be detrimental to the public interest or welfare. It would also
22 be inconsistent with RCW 90.54.020(4) which provides:

23 Adequate and safe supplies of water shall be
24 preserved and protected in potable condition to
25 satisfy human domestic needs.

26 The proposed appropriation was not shown to be detrimental to the
27 public welfare or interest.

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1 VI

2 The granting of a permit to appropriate ground water has not been
3 shown to be in error. However, the permit, when issued, should
4 include the underlying assumptions which specifically describe the
5 proposed project, such as the minimum distance from appellant's Well
6 No. 1, the maximum GPM withdrawal per well, and a provision for
7 appropriate well spacing.

8 VIII

9 Any Finding of Fact which should be deemed a Conclusion of Law is
10 hereby adopted as such.

11 From these Conclusions the Board enters this
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ORDER

The granting of a permit under Ground Water Application Number
G2-25958, as modified pursuant to Conclusion of Law VI, is affirmed.

DONE this 9th day of July, 1982.

POLLUTION CONTROL HEARINGS BOARD

David Akana

DAVID AKANA, Lawyer Member

Gayle Rothrock

GAYLE ROTHROCK, Vice Chairman